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1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN FRANCISCO  
3 ---oo---

4  
5 LESLIE WHITELEY, et al.,  
6 Plaintiffs,  
7 vs. Case No. 303184  
8 RAYBESTOS-MANHATTAN, INC.,  
9 et al.,  
10 Defendants.

11 /  
12  
13  
14

15 DEPOSITION OF ELLEN MERLO  
16 WEDNESDAY, MARCH 15, 2000  
17 VOLUME III  
18  
19

20 REPORTED BY:  
21 JO ANN BRUSCELLA, CSR No. 4295  
22  
23

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1 I N D E X  
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3 DEPOSITION OF ELLEN MERLO, VOLUME III  
4

5 EXAMINATION BY: PAGE  
6  
7 MR. LADD 458

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9 INSTRUCTION NOT TO ANSWER  
10 PAGE LINE(S)  
11 483 15  
12 484 2  
13 487 22  
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00458

1 BE IT REMEMBERED that, pursuant to Notice of Taking  
2 Deposition, and on Wednesday, March 15, 2000, commencing at  
3 the hour of 3:20 a.m. thereof, at One Market, Steuart Tower,  
4 Ninth Floor, San Francisco California, before me, JO ANN  
5 BRUSCELLA, duly authorized to administer oaths pursuant to  
6 Section 2093(b) of the California Code of Civil Procedure,  
7 personally appeared

8 ELLEN MERLO,  
9 called as a witness on behalf of Plaintiffs, and the said  
10 witness, having been previously duly sworn, was thereupon  
11 examined and testified further as hereinafter set forth.

## APPPEARANCES

EXAMINATION BY MR. LADD

23 BY MR. LADD: Q. Ms. Merlo, are you aware of the  
24 current procedural status of the Whiteley case?

25 Do you know it's submitted to the jury for  
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1 decision?

2 A. Yes.

3 Q. You know that the only thing left in that case, if  
4 anything is left at all after the jury comes back, would be  
5 the punitive damage issue?

6                   A.     Correct.

7 Q. And do you understand that you have been -- that  
8 Philip Morris has told us that you will appear in the  
9 punitive damage phase of the case?

10 A. Yes.

11 Q. And that you are I think either the only Philip  
12 Morris employee or one of -- as far as I know, she was the  
13 only one. If I am wrong about that, I don't want to suggest  
14 that to her in terms of --

15 MR. BARRON: I don't know that you need to suggest  
16 anything. She was disclosed to your side, as I understand  
17 it, so there would be no question about the fact that she  
18 could testify in a way that included some opinions, even  
19 though, really, one could argue that she is a fact witness,  
20 and the opinions that she gives are facts because they are  
21 part of her job description.

22 But because California can be viewed as having  
23 kind of a blurred description of what constitutes an expert,  
24 an expert opinion, and one that has to be disclosed and  
25 produced for deposition versus one who is a fact witness and  
001620

1 doesn't have to be, out of an abundance of caution we  
2 suggested she may offer opinions, and you ought to depose  
3 her.

4 I think that's the history. I don't think that  
5 means that we are foreclosed from calling any other Philip  
6 Morris person as a witness who would again be viewed as a  
7 fact witness and maybe offer no opinions, or if offering one  
8 or two opinions, be arguably offering, in effect --

9 MR. LADD: The kinds of opinions a lay witness  
10 could offer.

11 MR. BARRON: Precisely.

12 BY MR. LADD: Q. Ms. Merlo, is it fair to say  
13 that you realize that it is certainly possible that you may  
14 be the only Philip Morris employee who testifies to the jury  
15 on the punitive damage phase of the case?

16 A. Yes.

17 Q. And are you prepared essentially to  
18 tell -- to explain to the jury what is the position of Philip

19 Morris with respect to issues that you're asked about?

20 A. Yes.

21 MR. LADD: Mr. Barron, was there in some fashion a  
22 discussion of the topics or list of the topics for this  
23 testimony?

24 MR. BARRON: I have not had that discussion. I  
25 don't know if anybody else has.

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1 MR. LADD: I take it we are no longer under the  
2 restrictions that we were when I started Ms. Merlo's  
3 deposition. You were quite nice about letting me ask a bunch  
4 of questions. But we were proceeding under a person most  
5 knowledgeable deposition notice that at least arguably would  
6 have limited the permissible topics of my examination.

7 I take it to the extent we were under a  
8 restriction before, we are not under a restriction anymore.

9 MR. BARRON: It depends on what you mean by  
10 "restriction." You took her deposition as the person most  
11 knowledgeable on two subjects, and arguably you should have  
12 been restricted to those areas or any information that  
13 relates to those areas. I think you were allowed to ask  
14 things that went beyond that.

15 MR. LADD: I think I was, too.

16 MR. BARRON: There is a restriction that would  
17 apply here, which is that you shouldn't go back into those  
18 two areas; that you have exhausted your opportunity to  
19 question her on those topics.

20 There also will be a restriction that I am not  
21 going to allow you to talk to her about things that she is  
22 going to testify about at trial and that don't fall within  
23 her job description or any other way that would produce, for  
24 example, impeaching evidence or other relevant evidence.

25 I don't know we can categorize all those areas.

00462

1 You ought to go ahead and proceed, and we will see how it  
2 goes.

3 MR. LADD: To the extent I am going to try, I  
4 actually -- while I don't know that I necessarily agree that  
5 I have to, I think as a practical matter I plan to not go  
6 back into areas that I have covered before.

7 And as a practical matter, I would prefer to limit  
8 myself to things that she is likely to testify about in the  
9 remaining part of the case. I fear I don't know for sure  
10 what those are, and I wonder if you would feel free to  
11 disclose at all what you intend to examine her about at  
12 trial.

13 MR. BARRON: Let's go off the record and discuss  
14 it.

15 (Discussion off the record.)

16 BY MR. LADD: Q. Ms. Merlo, one of the things I  
17 am going to ask you about is compensation structure both for  
18 you and for the company generally, the officers generally. I  
19 might as well start out with that.

20 There was some publicity last week or early this  
21 week about Philip Morris paying bonuses to executives.

22 Are you familiar with generally what came out in  
23 the Wall Street Journal in that regard?

24 A. Yes, I am.

25 Q. Part of my questions is going to be about that,

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1 and part is going to be more broad. You, yourself, have been  
2 on, I assume, several forms of compensation that you have had  
3 over the years, salary and some other things.

4 Is that accurate?  
5 A. That's correct.  
6 Q. I assume the salary you have been on is always  
7 while you have been working for Philip Morris?  
8 A. Yes.  
9 Q. And presumably gradually going up over the years.  
10 A. Yes.  
11 Q. And your present salary is what?  
12 A. I think it's three hundred or three hundred  
13 twenty-five thousand dollars. I'm not positive.  
14 MR. BARRON: John, I hate to insert myself so  
15 early, since we just went off the record, to try to reach  
16 some understandings and agreements. But in reading her  
17 deposition that was taken so far, I thought you went into the  
18 issue of compensation.  
19 MR. LADD: I just looked in the index and tried to  
20 find "salary" and didn't see it.  
21 MR. BARRON: You did.  
22 MR. LADD: Do you know what page?  
23 MR. BARRON: I can find it fairly easily. Let's  
24 go off the record.  
25 (Discussion off the record.)

00464

1 BY MR. LADD: Q. Was there a change in your bonus  
2 structure within the last month or so?  
3 A. Yes.  
4 Q. And --  
5 A. Well, not month, but yes.  
6 Q. Recently.  
7 A. Recently.  
8 Q. And when, approximately, did you learn about that  
9 change?  
10 A. Well, I learned about my bonus at the end of  
11 January.  
12 Q. Of 2000.  
13 A. Of 2000.  
14 Q. And were the changes that were being made changes  
15 that were prospective only, or were there some changes that  
16 were retrospective as well?  
17 A. It was only prospective.  
18 Q. Would it be fair to say that the company was  
19 recognizing that some of the stock options that it has given  
20 to its executives in the past might have lost their value,  
21 and that some additional form of compensation was necessary  
22 to retain and hire people?  
23 A. I think that was one of the motivations.  
24 Q. Would it be fair to characterize the changes that  
25 less of the compensation took the form of stock options and

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1 more of the compensation took some other form?  
2 A. No, not necessarily.  
3 Q. Okay. Was it the case that -- well, did you  
4 continue to get stock options in pretty much the same fashion  
5 as you had received them in prior years?  
6 A. Yes.  
7 Q. I take it it was recognized, however, that those  
8 stock options might end up being valueless.  
9 A. I wouldn't characterize it quite that way.  
10 Q. Let's go back on your own past bonuses. Maybe we  
11 can put it -- I think it's much easier to understand this if  
12 one looks at a specific case. I'm sorry to pick on you.  
13 In your positions in the past years, you have  
14 qualified for stock options; is that true?

15 A. I have.  
16 Q. Over the last ten years or so?  
17 A. Yes.  
18 Q. And those stock options are given to you in the  
19 summer of each year?  
20 A. Correct.  
21 Q. And they would be for a given number of shares of  
22 stock.  
23 A. Yes, that's right.  
24 Q. And each one of those shares of stock has a  
25 particular exercise price associated with it.

00466  
1 A. That's correct.  
2 Q. When you receive a stock option in any given year,  
3 does all of the stock have the same exercise price, or does  
4 it have a range of different exercise prices?  
5 A. It all has the same exercise price.  
6 Q. Is the exercise price based upon what the market  
7 value of that stock has been at some time in the past?  
8 A. The exercise price is based on what the value of  
9 the stock is at the date and the exact time of award.  
10 Q. So if you got the award on June 30th, 1997 --  
11 A. At ten o'clock in the morning.  
12 Q. -- at ten o'clock in the morning, the price that  
13 was on the market that day would be the price at which you  
14 could exercise your option.  
15 A. That would be what -- yes, that's what the stock  
16 exercise amount was. Yes.

17 Q. And also with each stock option that you get,  
18 there is a specific period of time within which you can  
19 exercise your option.  
20 A. Yes.  
21 Q. Is that typically about ten years?  
22 A. Correct.  
23 Q. And is it the case that you can exercise that  
24 option any time you want within that ten-year period of  
25 time?

00467  
1 A. No.  
2 Q. Is there a period of years that from the date of  
3 the grant forward that you can't exercise it within some  
4 number of months or years?  
5 A. One year.  
6 Q. So that you have the option of exercising one year  
7 after you get it, or two years and three years or four years,  
8 et cetera, up to a maximum of ten.  
9 A. Correct.  
10 Q. Is it fair to assume that you have X number of  
11 stock options to purchase so many shares of stock at any  
12 given time?  
13 A. Correct.  
14 Q. If we were to count your stock options, including  
15 both the ones that expire next, but also including the ones  
16 that you can't exercise yet because the year hasn't passed,  
17 how many stock options would you have?  
18 A. I really and truly don't know the answer to that.  
19 It would be a guess, at most.  
20 MR. BARRON: We don't want you to guess.  
21 Let me --  
22 THE WITNESS: I really don't know.  
23 BY MR. LADD: Q. Can you give me a range that you  
24 feel confident about?  
25 In other words, less than a million? More than

00468

1 five hundred? To be kind of silly about it.

2 A. That would be silly, but very nice. No. I would  
3 say it's more in the one hundred to one hundred fifty  
4 thousand range.

5 Q. Now, have you ever exercised any of your options?

6 A. Yes, I have.

7 Q. Were you exercising options that were about to  
8 expire?

9 A. I have exercised options that have been about to  
10 expire.

11 Q. Have you also exercised options that have not been  
12 about to expire?

13 A. I have.

14 Q. And on some occasions have you sold the stock  
15 shortly after you exercised the option?

16 MR. BARRON: I will object to the form of the  
17 question as vague and ambiguous in terms of "shortly after."

18 BY MR. LADD: Q. Within six months after the  
19 exercise of the option have you sold any of the stock?

20 A. Usually not.

21 Q. Usually you have held the stock.

22 A. Yes.

23 Q. Have you ever been in a situation where you sold  
24 that portion of the stock that was necessary to generate the  
25 funds necessary to pay the taxes on the option you received?

00469

1 A. Yes, I have done that.

2 Q. And is it your usual practice to do that, or is it  
3 your usual practice not to do that?

4 A. I have done both.

5 Q. Have there been any options which you held that  
6 have expired prior to the time you exercised the option?

7 A. No.

8 Q. Approximately how many shares of Philip Morris  
9 stock do you hold now? And I mean shares, not options.

10 A. About thirty thousand.

11 Q. Do you have any understanding as to the average  
12 price at which you acquired those?

13 A. I acquired about twenty-five thousand at  
14 fifty-two, and the balance at thirty something, I believe.

15 Q. And that's actual real cash money you have to take  
16 out of your pocket to pay to get those; is that correct?

17 A. That's correct.

18 Q. So that if those -- to the extent that the stock  
19 has fallen in value since the time you exercised -- let me  
20 ask you this.

21 In both cases when you exercised that fifty-two,  
22 for example, I take it that the market value of the stock was  
23 in excess of fifty-two.

24 A. No. I need to clarify that.

25 The market value was at fifty-two, and I

00470

1 exercised -- the exercise was less. The exercise price was  
2 less.

3 Q. Do you recall what the exercise prices were as  
4 opposed to the market value, at the time you exercised?

5 A. I believe the exercise price was twenty-eight or  
6 thirty dollars. Something in that range.

7 Q. In terms of both those blocks of stock?

8 A. The first block was about twenty-eight. I think  
9 the second block was thirty-some-odd.

10 Q. So at that point, if you had turned right around

11 and sold it, you would have made a profit.  
12 A. That's correct.  
13 Q. Having held the stock, its market value has since  
14 declined to a level less than what you paid for it.  
15 Is that true?  
16 A. That's correct.  
17 Q. What's the market value of Philip Morris stock  
18 now?  
19 A. Today it was twenty dollars. Approximately twenty  
20 dollars. Maybe a few pennies above.  
21 Q. Do you hold stock options right now, not stock  
22 now, but stock options, where the exercise price is more than  
23 twenty dollars?  
24 A. Yes.  
25 Q. Are all of your unexercised options at exercised  
00471  
1 prices in excess of twenty dollars?  
2 A. I believe so.  
3 Q. So if there is no change in the market conditions,  
4 the options have no value as of right now; is that correct?  
5 A. That's correct.  
6 Q. If the stock goes down, they still have no value.  
7 If the stock goes up, they might have some value at some  
8 point.  
9 Is that fair to say?  
10 A. They may.  
11 Q. Do you recall what are the ranges of exercised  
12 prices represented by the various options that you hold?  
13 From lowest to highest.  
14 A. I believe the lowest is in the high thirties, and  
15 the highest would be -- I'm not sure. I really, quite  
16 frankly, don't remember. It would be a guess.  
17 Q. The market price of the Philip Morris stock would  
18 have to increase from twenty and almost double before you  
19 would have any value in those options at all.  
20 Is that more or less correct?  
21 A. More or less, yes.  
22 Q. And in terms of the upper end of the calculation,  
23 if the market value were ten times higher, those stock  
24 options would have a great deal of value.  
25 A. They would certainly have more value, yes.  
00472  
1 Q. I am not going to ask you about your total net  
2 worth. I'm just going to ask you whether the values -- the  
3 value that you currently have in Philip Morris stock, is that  
4 a substantial portion of your personal net worth?  
5 MR. BARRON: I'm sorry. I have to have that  
6 question read.  
7 MR. LADD: Let me try to rephrase it.  
8 Q. I am trying to ask a question that gets me the  
9 evidence that I think I am entitled to present to the jury  
10 without unduly inquiring into matters that I have no interest  
11 about.  
12 My question is simply this. In your own personal  
13 view, is your financial interest in Philip Morris stock,  
14 taking both stock and options together, a substantial portion  
15 of your personal net worth?  
16 A. No.  
17 Q. Do you have the personal opinion that the value of  
18 Philip Morris stock would be higher if it were not for  
19 lawsuits such as the Whiteley lawsuit?  
20 A. Yes, I believe it would be.  
21 Q. Do you think that the operating results of the

22 company would justify higher market values than it's  
23 presently giving to the company?  
24 A. Yes, I do.  
25 Q. Is it your opinion that the tobacco part of the  
00473 1 company not only doesn't contribute to the value of Philip  
2 Morris as a whole, but actually subtracts from the value of  
3 Philip Morris as a whole?  
4 A. Did you say detract?  
5 Q. Detract, yes. If it was possible to own simply  
6 the nontobacco part of Philip Morris, that would be worth  
7 more than Philip Morris is today.  
8 A. I can't make that assumption, since it's one  
9 company and one stock.  
10 Q. Is it also fair to say that in your own personal  
11 estimation, that the stock market of Philip Morris would be  
12 likely to recover its value if the litigation was somehow  
13 resolved favorably --  
14 MR. BARRON: You misspoke. You want to have it  
15 read back and rephrase it?  
16 MR. LADD: Why don't I just try it again.  
17 MR. BARRON: You said the Philip Morris stock  
18 market.  
19 BY MR. LADD: Q. Is it your view that the value  
20 of Philip Morris stock would be likely to recover up in the  
21 range where it would make sense for you to exercise your  
22 options, if the current litigation against Philip Morris  
23 could be resolved favorably to the company?  
24 MR. BARRON: I'm going to object as vague and  
25 ambiguous and calls for speculation.

00474  
1 THE WITNESS: I think it's hard to say, given  
2 today's market.  
3 BY MR. LADD: Q. Do you think it is more likely  
4 that the stock would rise in value if the litigation were  
5 terminated favorably with the company than if it wasn't  
6 terminated favorably with the company?  
7 A. It's really hard to say, given the market  
8 volatility, what's controlling stocks today.  
9 Q. Have you ever, as opposed to stock options,  
10 received restricted shares of stock in Philip Morris?  
11 A. Yes, I have.  
12 Q. Is that a recent development, or has that been  
13 true before?  
14 A. It's been true before.  
15 Q. Approximately how long ago was it that you first  
16 received restricted shares of stock?  
17 A. I would say maybe six, seven years ago.  
18 Q. And has that been an, more or less, annual program  
19 since then?  
20 A. No, it has not.  
21 Q. Has it been a program some of the time and not  
22 used other times?  
23 A. That's correct.  
24 Q. Do you have an understanding as to what causes  
25 issuance of restricted -- the decision to be made to issue  
00475

1 restricted stock in a given year, and what causes it to be  
2 decided not to issue restricted stock?  
3 A. I don't know.  
4 Q. When you received restricted stock, I take it  
5 that -- when we say "restricted," there are restrictions on  
6 your ability to cash in the stock.

7 A. That's correct.  
8 Q. Those restrictions would include that you have to  
9 stay with the company for a certain amount of time after you  
10 have gotten the stock?

11 A. That's correct.

12 Q. Is it also one of the restrictions that the  
13 company must continue to pay the same level of annual  
14 dividend to its common shareholders?

15 Is that a condition on sale of the stock?

16 A. I don't think I am understanding the question.

17 Q. Let me just ask it differently.

18 What do you understand to be any other  
19 restrictions on the stock, other than your continued service  
20 with the company?

21 A. Well, again, I'm not totally understanding.

22 Q. I am assuming that when we say "restricted stock,"  
23 the thing that economically distinguishes restricted stock  
24 from common stock is some set of restrictions that govern  
25 when you can sell it.

00476

1 A. Correct.

2 Q. I am wondering if there are any restrictions in  
3 addition to your longevity with the company.

4 A. My understanding is, it really is based on the  
5 time schedule, and it's awarded based on your holding it for  
6 a certain amount of time before you can turn it in.

7 Q. Is it your understanding that one -- that once the  
8 restriction conditions have been met, that one share of the  
9 restricted stock is the same value as one share of common  
10 stock of Philip Morris?

11 A. Yes, that's right.

12 Q. If you get to the point where you can sell it, it  
13 sells at that same market price we were discussing before.

14 A. That's correct.

15 Q. Roughly twenty dollars now. Something  
16 considerably in excess of that a couple years --

17 A. That's correct.

18 Q. Did you include your -- any of your restricted  
19 rights, stock rights, in those numbers that you gave me  
20 before?

21 A. I did.

22 Q. Did you include them in the options or in the  
23 shares?

24 A. I included them in the shares. Well, I gave  
25 you --

00477

1 Q. You told me you had twenty-five thousand.

2 A. No. I included them in the options. Sorry.

3 Q. Have you had any restricted shares that you have  
4 gotten to the point where you were entitled to sell them?

5 A. Yes.

6 Q. Have you in fact sold them?

7 A. Yes.

8 Q. If I understand it correctly, if you have one  
9 restricted share, and the market is thirty dollars for that  
10 share, you can turn in your right to that restricted share  
11 and get thirty dollars.

12 A. Not exactly.

13 Q. Can you explain to me?

14 (Interruption in proceedings)

15 (Discussion off the record.)

16 THE WITNESS: Yes. The company automatically  
17 withholds all taxes to you on the amount. So when you turn

18 your stock in, you get the net proceeds, but you don't get  
19 the gross.

20 BY MR. LADD: Q. And when you get that money,  
21 that's treated as compensation to you for tax purposes in the  
22 year received.

23 A. You can either get money or you can get the actual  
24 shares minus the number it takes to pay the . . . .

25 Q. Has it been your custom to get the money in the  
00478

1 case of the restricted stock?

2 A. I believe I took the stock instead of the money.

3 Q. And the value of the restricted stock just goes up  
4 and down with the market value of the re -- of the common  
5 stock.

6 A. That's correct.

7 Q. So that if a price falls from forty to twenty, you  
8 would lose half of your value on the restricted stock. Just  
9 to take a --

10 A. You never really have a value. You just get a  
11 number of shares, and they are worth what they are worth when  
12 they become mature.

13 Q. Was it your understanding of this year's  
14 development that the company was going to pay additional cash  
15 bonuses that it had not paid out before?

16 A. In part, yes.

17 Q. And was it also your understanding that the recent  
18 change for this year is it was going to be more restricted  
19 stock than it had before?

20 A. Correct.

21 Q. And was it also your understanding that the  
22 perceived need to do that was because the stock options  
23 recently had not had value to the officers and high-ranking  
24 employees of the company?

25 A. In part.

00479

1 Q. Now, do you know whether there had been an actual  
2 perceived problem with retention of high-level employees that  
3 led to that change, or that the company was just anticipating  
4 the danger of losing key employees?

5 A. I believe it was a combination of both.

6 Q. And was there a perception that Philip Morris  
7 either had lost or would lose people to other companies in  
8 the tobacco industry, or that it would lose people to other  
9 industries?

10 A. I believe it was more to other industries.

11 Q. Were salary increases as opposed to cash bonus  
12 increases a part of this changed plan?

13 A. No.

14 Q. Did you receive a salary increase for the year  
15 2000 as compared to 1999?

16 A. No, not yet.

17 Q. I'm sorry. Not yet?

18 A. Not yet.

19 Q. Are you eligible for such an increase at some  
20 later point in the year?

21 A. I hope so.

22 Q. Is there a typical time of year when that is --

23 A. Usually around the start of the year.

24 Q. At the start of each year are you told either a  
25 specific cash bonus that you will be eligible for, if certain

00480

1 conditions are met, or are you given a range of cash bonuses  
2 that you may be eligible for?

3 MR. BARRON: That's kind of a compound question,  
4 and you haven't included all the possibilities. I don't want  
5 to be too technical. I do have to object on the basis of  
6 ambiguity.

7 BY MR. LADD: Q. At the start of any given year,  
8 what do you learn about your potential bonus?

9 A. I learn what my bonus for that year will be.

10 Q. And are you told when that bonus will be payable?

11 A. I am normally told what the bonus is when I am  
12 given my bonus.

13 Q. Okay. Did you actually receive cash or a bonus  
14 sometime this year, in the year 2000?

15 A. Yes, I did.

16 Q. And that would be yours to keep even if you quit  
17 tomorrow.

18 A. That's correct.

19 Q. And what was the amount of that cash bonus this  
20 year?

21 MR. BARRON: What is the relevance of that?

22 MR. LADD: I think interest.

23 MR. BARRON: I'm sorry?

24 MR. LADD: Interest.

25 MR. BARRON: What do you mean, "interest"?

00481

1 MR. LADD: The interest of the witness in the  
2 subject matter in dispute.

3 MR. BARRON: I don't understand that concept of  
4 interest. It's not conditional. It's not going to be taken  
5 away.

6 MR. LADD: I suspect it's at least arguably fairly  
7 consistent from year to year. At least I am entitled to find  
8 out whether it is and whether it creates expectations of  
9 similar bonuses in the future.

10 MR. BARRON: I don't understand why the amount has  
11 any relevance.

12 MR. LADD: Because if you're trying to figure out  
13 what amount of interest is conferred by a fifty-percent  
14 increase in the bonus, one needs to know fifty percent of  
15 what or ten --

16 MR. BARRON: Let's go off the record for a  
17 moment.

18 (Discussion off the record.)

19 BY MR. LADD: Q. Miss Merlo, in this particular  
20 year was your cash bonus more or less than in the previous  
21 year?

22 MR. BARRON: By "particular year," you mean 2000?

23 THE WITNESS: It was more.

24 BY MR. LADD: Q. Have you received a cash bonus  
25 in all or virtually all of the last six or seven years?

00482

1 A. I have.

2 Q. And has that bonus in general increased from year  
3 to year?

4 A. In general, yeah.

5 Q. And are there years in which the bonus has gone  
6 down?

7 A. There has been occasion when my bonus has gone  
8 down.

9 Q. Do you have an understanding as to why it went  
10 down?

11 Did it go down for some reason specific to you, or  
12 whether it went down because of something that happened with  
13 the company, for example?

14                   MR. BARRON: You've got two questions. Why don't  
15 you ask whichever one you like, or both, but do it --

16                   MR. LADD: Actually, there were three questions.

17                   Q. Do you have an understanding as to why it is that  
18 it went down?

19                   A. Yes.

20                   Q. What's that?

21                   A. It was more specific to me and to the operating  
22 division that I was in.

23                   Q. When you start a year, are you given any form of  
24 information as to what form of bonus you can expect a year  
25 later?

00483

1                   A. No. No, not really.

2                   Q. Are you given, at the start of the year, any  
3 targets, you know, personal job targets, that you are told  
4 that you will be measured against for the purpose of your  
5 next-year's bonus?

6                   A. Well, my performance is based on certain goals,  
7 and that's -- I mean, that's how I'm evaluated.

8                   Q. Do you perceive that your bonus is based, at least  
9 in part, on your performance of those stated goals?

10                  A. My personal performance. Yes, absolutely.

11                  Q. And is it fair to say that you believe that you  
12 are more likely to get the bonus and -- are more likely to  
13 get an increased bonus if you meet your goals?

14                  A. That's correct.

15                  Q. What was the bonus amount you received in early  
16 2000?

17                  MR. BARRON: Don't answer the question. I'm going  
18 to instruct her not to answer for the reasons that we have  
19 discussed off the record, you and I.

20                  BY MR. LADD: Q. Do you have any understanding as  
21 to what range of bonuses you may be eligible for next year?

22                  MR. BARRON: Don't give him a number. You can  
23 answer the question yes or no, do you have an idea of the  
24 range.

25                  THE WITNESS: I have an idea of the range, but not

00484

1 with any specificity of number.

2                  BY MR. LADD: Q. What is your idea about the  
3 range?

4                  MR. BARRON: Don't answer the question. I  
5 instruct you not to answer based on the discussion you and I  
6 had off the record.

7                  (Discussion off the record.)

8                  BY MR. LADD: Q. In addition to your salary and  
9 your cash bonus, what was the most recent time you received a  
10 stock option?

11                  A. In January.

12                  Q. January of this year?

13                  A. Yes.

14                  Q. And the exercise price would have been the  
15 exercise price that would have been the value of the stock at  
16 time it was granted to you?

17                  A. That's correct.

18                  Q. And did you include that when you told me you had  
19 between a hundred and hundred and fifty thousand worth of  
20 options?

21                  A. I did.

22                  Q. Do you anticipate that you will get stock options  
23 based upon the work you're doing now?

24                  You do expect to get more stock options later this

25 year or early next year?

00485

1 A. I may. I don't anticipate anything.

2 Q. You are eligible for it.

3 A. I am eligible.

4 Q. In general, have you gotten an increasing number  
5 of options as you have matured in your job?

6 A. Overall, I would say yes.

7 Q. In the last, say, six or seven years have you got  
8 stock options each of those years?

9 A. I have, yes.

10 Q. Have you been told that there is any change in the  
11 plan with respect to stock options in the future?

12 A. Only in the timing.

13 Q. What was the change in the timing?

14 A. They now are awarding options in January instead  
15 of June.

16 Q. When the stock options were awarded this January,  
17 was that in lieu of options given last June or options that  
18 would have been given next June?

19 A. Options that would have been given this coming  
20 June.

21 Q. You got them six months earlier.

22 A. That's correct.

23 Q. And is it your anticipation that if stock options  
24 are awarded, they will be awarded next January?

25 A. That's correct.

00486

1 Q. What were the number of stock options that you got  
2 this January?

3 A. I don't remember the exact number.

4 Q. Can you give me a range?

5 A. I didn't really focus. I don't know the number  
6 that I got this year. I have to check it.

7 Q. Do you believe it to have been in excess of twenty  
8 thousand?

9 A. It may have been.

10 Q. Are there any stated expectations for your  
11 performance in order to be entitled -- in order to receive  
12 stock options next year?

13 A. Well, there is always an expectation that you  
14 perform well and that you meet your goals.

15 Q. Those would be the same goals we talked about with  
16 respect to cash bonus.

17 A. In general. For my performance in general, yes.

18 Q. There is not a distinction in terms of different  
19 kinds of compensation in terms of what goals you should try  
20 to meet; is that correct?

21 A. That's right.

22 Q. In addition to the cash bonus you got in January,  
23 is there some form of long-term cash bonus in addition to the  
24 one we talked about earlier?

25 A. There is.

00487

1 Q. And is there a pattern as to when long-term  
2 bonuses are awarded?

3 A. Every three years.

4 Q. And what was the last -- when was the last one you  
5 got?

6 A. Two years ago.

7 Q. And had you received cash bonuses for some number  
8 of three-year intervals before the most recent one?

9 A. Yes. I believe I did get one before that.

10 Q. Would that have been three years earlier?  
11 A. That's correct.  
12 Q. Five years ago, roughly?  
13 A. That's correct.  
14 Q. When those cash bonuses are made for the  
15 three-year basis, do you get the entire amount when it's  
16 awarded, or does the actual award also come in over a  
17 three-year period?

18 A. No. You get it at the end of three years.

19 Q. Is the amount of that bonus established in  
20 advance?

21 A. It is not.

22 Q. What was the amount of that cash bonus the last  
23 time you got it?

24 MR. BARRON: Don't answer the question. I am  
25 instructing her not to answer for the reasons that we

00488

1 discussed off the record.

2 BY MR. LADD: Q. Did you get restricted stock so  
3 far this year?

4 A. Yes, I did.

5 Q. And is there a traditional time of year when one  
6 gets restricted stock?

7 A. Normally, if there is restricted stock, it is  
8 granted at the same time as regular unrestricted stock,  
9 and -- as unrestricted stock.

10 Q. That used to be in June and now is in January?

11 A. That's correct.

12 Q. And the stock that you received -- you did receive  
13 some restricted stock this January; correct?

14 A. I did.

15 Q. And you will not actually be able to take  
16 advantage of that stock unless you stay three more years?

17 A. No. I believe it's two -- I think it's actually a  
18 two-year restriction.

19 Q. Have you gotten restricted stock at the normal  
20 time?

21 Have you gotten entitlements to restricted stocks  
22 in the past prior to January of this year?

23 A. I did.

24 Q. And consistently over some period of years?

25 A. No.

00489

1 Q. On about how many discrete occasions have you  
2 gotten restricted stock in the past?

3 A. Including January?

4 Q. Including this January.

5 A. Three times.

6 Q. Have you been able to -- do you recall the amount  
7 that you received the last time you exercised your right to  
8 cash in restricted stock, in terms of either the amount of  
9 cash or the number of shares you got after withholding?

10 A. It was several years ago. I believe it was  
11 approximately ten thousand shares. I have gotten the  
12 proceeds of approximately half of that.

13 Q. Ten thousand shares is the gross pre-deduction  
14 number.

15 A. Yes, I believe it was, approximately.

16 Q. In the most recent year, when you got an  
17 entitlement to stock that you won't actually collect for two  
18 more years, what was the number of shares?

19 A. Just this January?

20 Q. Yes, this January, which you won't be able to cash

21 in for two more years.

22 A. I believe it was -- hum. Let me figure it out.

23 I think it's about five or six thousand shares.

24 It could be a little bit more, but I don't remember.

25 Q. Now, the Wall Street Journal article that I had

00490

1 reference to, there was an indication that Philip Morris said  
2 it would pay what you felt Philip Morris characterized as  
3 special cash bonuses.

4 Was that an additional cash bonus beyond what we  
5 already talked about, or was that just a change in the amount  
6 of the cash bonus?

7 A. It was additional.

8 Q. Have you already received the first instance of  
9 that?

10 A. No.

11 Q. So that's something that's anticipated or hoped  
12 for for next January?

13 A. No. I will receive -- actually, it was -- I will  
14 receive sixty percent in cash, half in June and half next  
15 January. And the rest we have talked about. It's the  
16 restricted stock.

17 Q. When you say "sixty percent in cash," that's sixty  
18 percent of the total kind of new compensation that's --

19 A. That's correct.

20 Q. What's the amount, the hundred percent of that?

21 MR. BARRON: Don't answer the question for all the  
22 reasons that we discussed off the record.

23 BY MR. LADD: Q. What's the amount of cash you're  
24 going to get that's the sixty percent of it?

25 MR. BARRON: Don't answer that question. Same

00491

1 instruction. Same grounds.

2 BY MR. LADD: Q. Do you have any other forms of  
3 compensation within the last, say, five years at Philip  
4 Morris which we haven't discussed so far?

5 A. No.

6 Q. I take it you get employee benefits of some kind.

7 A. Health care --

8 Q. Health care and things like that?

9 A. Yes, I do.

10 Q. Do you have any cafeteria plan that generates a  
11 significant amount of cash?

12 A. Pay?

13 Q. Cafeteria plan that you take out in cash rather  
14 than take out in benefits.

15 A. I see. An option to -- no.

16 Q. You take the actual benefits rather than -- well,  
17 let me ask you that.

18 Is there a cafeteria-style plan where you have the  
19 option of taking either benefits or cash?

20 A. No.

21 Q. You are familiar with a June 20, 1997, proposed  
22 settlement agreement?

23 A. I am.

24 Q. Do you associate some promised corporate culture  
25 changes with that proposed settlement agreement?

00492

1 MR. BARRON: You have answered. I wasn't sure  
2 what he meant by the phrase because we haven't had a common  
3 definition.

4 BY MR. LADD: Q. That terminology change in  
5 corporate culture was one that was used in connection with

6 the June 20th, 1997, agreement; is that true?

7 A. Yes, it was.

8 Q. In your view has Philip Morris undergone those  
9 changes in corporate culture even though the June 20th  
10 agreement never was finalized?

11 A. I believe there have been changes in the corporate  
12 culture, yes.

13 Q. Do you think that the failure of the June 20th  
14 agreement to be finalized has limited, in any fashion, the  
15 corporate culture changes that were contemplated under that  
16 agreement?

17 A. No, I don't believe so.

18 Q. And how would you best explain to somebody outside  
19 the company what ways in which Philip Morris was going to  
20 change its corporate culture?

21 A. Well, I believe that the corporate culture has  
22 changed in several ways.

23 First of all, we established a mission and a set  
24 of values and guiding principles that were shared with every  
25 employee within the company. So that I believe that there is  
00493

1 a clear expectation or understanding among every employee of  
2 what the expectation is. And our guiding principles  
3 establish a benchmark for how decisions are made and how  
4 business is conducted.

5 Q. Is the new Tobacco Issues Web site, in part, an  
6 implementation in that change in corporate culture?

7 A. I think it's part.

8 Q. When you talk about having a mission and a new set  
9 of corporate values, are those the mission statements and set  
10 of values that one can find expressed in the Web site?

11 A. That's correct.

12 Q. In your view, what is different about the way in  
13 which decisions are made now, in 2000, from how they -- the  
14 same decision would have been made in late 1996?

15 MR. BARRON: Well, I'm going to object to the  
16 question as too general and calling for a narrative. But I  
17 am going to allow her to answer the question as long as at  
18 least the record is clear, if you don't agree, that she is  
19 giving you a general overview kind of response.

20 MR. LADD: I am hopeful that her general overview  
21 will lead to the more specific questions, which are probably  
22 the more interesting ones.

23 THE WITNESS: I think, as I expressed earlier,  
24 because we have a very specific mission, that our mission is  
25 to be the most respected and responsible developer,  
00494

1 manufacturer and marketer of products, consumer products, for  
2 adults. And our core business is tobacco, and we have a very  
3 specific set of core values and guiding principles as to how  
4 we are -- we measure our success in achieving that mission.

5 I think there is a clear expectation and an  
6 understanding for everyone as to if faced with a problem, how  
7 they will deal with it and what the guiding principles in  
8 making that decision should be.

9 BY MR. LADD: Q. Do you think that the changes in  
10 corporate culture have influenced the creative content of  
11 Philip Morris advertising?

12 A. I think you're going to have to be a bit more  
13 specific.

14 Q. When I say "creative content of advertising," I'm  
15 trying to exclude media placement choices and talk about the  
16 ads themselves.

17           Do you think that Philip Morris advertising has  
18 changed as a result of the June 20th corporate culture  
19 changes?

20           A. Well, there have been some changes in some of our  
21 advertising, and there certainly has been a change in where  
22 and how we advertise in the last several years.

23           Q. Let's get the where and how out of the way first.  
24 Is there an agreement on billboards?

25           A. There is an agreement on billboards, yes.

00495

1           Q. Which is what?

2           A. Which is that there are no longer any tobacco  
3 advertisements on billboards and other outdoor signage, like  
4 transit advertising, buses, taxis.

5           Q. And that change was actually written into the  
6 multistate settlement agreement?

7           A. That is part of the -- yes, the master settlement  
8 agreement.

9           Q. What other changes -- were there changes in events  
10 sponsorship?

11           A. Yes, there were.

12           Q. Were those changes also made in connection with  
13 the master settlement agreement?

14           A. Yes, they were.

15           Q. Did those limit the number of events that Philip  
16 Morris could sponsor?

17           A. It did.

18           Q. And it limited it to just one event?

19           A. One on behalf of the company, yes.

20           Q. An individual brands sport events?

21           A. One.

22           Q. One each?

23           A. No. One -- that's what I said, one for the entire  
24 company. And you can choose which brand that might be, but  
25 only one sponsorship.

00496

1           Q. And has Philip Morris made the choice as to which  
2 event it's going to continue to sponsor?

3           A. Yes.

4           Q. Which is?

5           A. Indy Car auto racing sponsorship.

6           Q. Are you aware of the fact that R.J.R. has also  
7 chosen as its event to sponsor a -- the Winston Cup series?

8           A. Yes, I am aware of that.

9           Q. In your case, you sponsor -- rather than the  
10 series, you sponsor a team.

11           A. We sponsor a team and two individual races as part  
12 of the car -- the championship auto racing circuit.

13           Q. So there is a team that involves multiple cars,  
14 and there is also two of the races that are amongst the races  
15 on the circuit?

16           A. That's correct.

17           Q. Which are the races that you continue to sponsor?

18           A. There is one in Homestead, Florida, and one in  
19 Fontana, California.

20           Q. Is that kind of a multiyear commitment from Philip  
21 Morris to continue to support those?

22           A. I believe it is, yes.

23           Q. Were there events sponsorships that were  
24 discontinued as a result of that agreement?

25           A. Yes.

00497

1           Q. And what was discontinued?

2       A. The Virginia Slims Tennis Seniors. Virginia Slims  
3 sponsored the senior women's tennis tour. Benson and Hedges  
4 sponsored blues festivals and some jazz festivals. Merit and  
5 then Cambridge sponsored bowling. I think Marlboro had some  
6 musical sponsorships.

7       Q. Are there some kinds of musical events that the  
8 company can't participate in without being seen as sponsoring  
9 that event?

10      A. There can be -- I wouldn't really call it an  
11 event, but the companies -- the premise of the MSA is that it  
12 forbids the companies to market to kids, while at the same  
13 time recognizing their right to responsibly market to adults  
14 who choose to smoke. Therefore, the companies are allowed to  
15 participate in events in age-restricted venues that are not  
16 open to the general public and are not sponsorship events.

17      Q. So events sponsored at a bar, for example, would  
18 be permissible?

19      A. Because it's limited, and it's age-restricted, and  
20 it's not a big, general market sponsorship. So an event in a  
21 bar that is age-restricted, it would be allowed under the  
22 MSA.

23      Q. And even could be called the Marlboro Blues Night,  
24 for example.

25      A. It could.

00498

1       Q. Is there any limitation on the number or extent of  
2 those forms of participation in the events?

3       A. No.

4       Q. We have talked about billboards, and we have  
5 talked about event sponsorships.

6       What other changes have there been on where and  
7 how you advertise?

8       A. Well, the media that we use, the magazines that we  
9 use, have to be audited and based on subscriber numbers. No  
10 more than -- I should say eighty-five percent, or more, of  
11 the readership must be twenty-one years of age, or older, in  
12 order for a magazine to be qualified as being a place where  
13 tobacco advertising can appear.

14      Q. Did you say over twenty-one years?

15      A. That's correct.

16      Q. And the under this method is there an attempt to  
17 measure readership as opposed to people who purchase the  
18 product, or are they the same?

19       If I buy a Time magazine, and my daughter reads it  
20 regularly at home, is there any effort to find out whether  
21 she counts or not, or am I assumed to be the reader  
22 because --

23      A. You are assumed. It's based on subscriber  
24 information.

25      Q. How is that different from what Philip Morris was

00499

1 doing before?

2       A. Actually, it's not different from what Philip  
3 Morris was doing before because we used that  
4 rule of thumb internally for some time.

5       But that has now become -- we did it voluntarily  
6 as part of our own code. But that now is specifically part  
7 of the MSA, and the states Attorneys General have the right  
8 to audit the magazines to see the audit numbers, to question  
9 whether or not a magazine does qualify, et cetera.

10      Q. Do the magazines themselves hire the auditing  
11 agencies to audit them?

12      A. No.

13           Actually, there are companies that are  
14 acknowledged as magazine auditors that the general public  
15 advertisers, everybody buys their auditing information from.  
16 ABC is one, Donnelly. There are several of them that  
17 identify demographics of magazines, and they are accepted as  
18 kind of the authorities in the field.

19           So it's not that magazine A can go out and hire a  
20 firm and say, "Go do my audit for me." It doesn't work that  
21 way.

22           Q. Typically, when you want an audit, do you go to  
23 the media source and say, "Please give me one of your audits  
24 from this re" --

25           A. You can go to the -- you can buy -- the  
00500

1 information is done on an ongoing basis, and you can just go  
2 to the auditing firm and get it, or you can get it from the  
3 magazine. Either way.

4           Q. Which way is it usually done?

5           A. Both.

6           Q. What other changes do you see having resulted from  
7 this change in corporate culture, in terms of when and how  
8 you advertise?

9           A. Well, the MSA also provides for no cartoon  
10 characters, or any character that is a caricature or doesn't  
11 appear to be a real representation of a human being, or gives  
12 a human being supernatural powers, et cetera. So there are  
13 pretty strict guidelines.

14           Q. Are there any advertising campaigns Philip Morris  
15 was using that it had to discontinue because of that  
16 provision?

17           A. Yes.

18           Q. Which ones?

19           A. Benson and Hedges.

20           Q. What was the -- what was discontinued?

21           A. We used kind of two giant cigarettes that took the  
22 form of human beings. And we felt that that, under the terms  
23 of the MSA, did not comply, and therefore we discontinued  
24 that advertising.

25           Q. Anything else?

00501

1           A. No other campaign that I am aware of, no.

2           Q. The Marlboro Man is still permissible under the  
3 MSA?

4           A. Yes, it certainly is.

5           Q. Is that by some specific provision that says you  
6 can continue to do that, or is that because it doesn't fall  
7 within any of the prohibitions?

8           A. It doesn't fall within any of the prohibitions,  
9 but it does fall within the context of where we may advertise  
10 and where we may not advertise.

11           Q. Right. Any other changes in where and how you  
12 advertise, other than what we have discussed?

13           A. Well, promotional programs. There is no longer  
14 any logo items. So where in the past there has been a  
15 practice in the industry of providing continuity items with  
16 brand logos on them, that is no longer permitted.

17           Q. And Philip Morris was doing some of that. That  
18 was an activity that you discontinued?

19           A. That's correct.

20           Q. And prior to the MSA, Marlboro and other brands  
21 would have made available to smokers, say, clothing with  
22 brand logos on it.

23           A. Clothing, T-shirts, caps, bags. Yes.

24 Q. A vary right of that kind --  
25 A. A variety of that kind of thing.  
00502

1 Q. Did any of the Philip Morris brands have any form  
2 of coupon turn-in where you get promotional material in  
3 exchange for demonstrating you had bought a certain amount of  
4 product?

5 A. Yes. Marlboro -- we call them Marlboro Miles, and  
6 they were on the side of the pack.

7 Q. Are those still permitted under the new regime?

8 A. Yes. You can still -- you can still -- I'm not  
9 sure if we discontinued Marlboro Mile. I have to check on  
10 that.

11 Q. Any other restrictions on how you advertise, that  
12 you can think of?

13 A. I think that's pretty much it.

14 Q. Other than the two giant cigarettes and the Benson  
15 and Hedges ads, can you think of anything that's changed in  
16 the content of your advertising, what's depicted or what's  
17 said in advertising, as a result of the changes in corporate  
18 culture?

19 A. Nothing comes to mind.

20 Q. Does Philip Morris still abide by the restrictions  
21 in the advertising code of the early 1960s?

22 A. Yes.

23 Q. Is it your understanding that roughly three years  
24 into that utilization of that code, that the so-called "czar"  
25 for advertising was discontinued, and the companies  
00503

1 self-enforced the code against themselves?

2 A. That's correct.

3 Q. Is that still the case?

4 A. I believe so. Yes.

5 Q. So if Philip Morris is trying to decide whether  
6 one of its ads complies with the advertising code, it asks  
7 the Philip Morris legal department to give it an opinion on  
8 that topic?

9 A. It asks the -- yes, it does ask the Philip Morris  
10 legal department to give it an opinion.

11 Q. Do you know of any other enforcement mechanisms of  
12 the codes, other than that?

13 A. Well, as I say, there is an enforcement mechanism  
14 now in the Master Settlement Agreement, vis-a-vis the  
15 Attorneys General. And if, in their estimation, either our  
16 advertising or promotions, the way we advertise, where we  
17 advertise, is, by their -- in their judgment, focused on kids  
18 or aimed at kids or marketed to kids, they can get us -- make  
19 us stop either by telling us to stop; and if we don't, they  
20 can take us to court.

21 Q. Basically the states gave up the lawsuits that  
22 they had pending, but they can initiate new lawsuits against  
23 you if the -- your conduct violates the MSA, no?

24 MR. BARRON: She is not a lawyer, and maybe you're  
25 just speaking kind of loosely.  
00504

1 MR. LADD: I was. And ignore recently, as well.  
2 MR. BARRON: You don't need to file a new lawsuit  
3 when you are subject to the agreement, and they can go back  
4 to court and hold them in contempt. I don't want her talking  
5 about the fact of whether the Attorneys General could file a  
6 new and different lawsuit if they felt there was some other  
7 reason that wasn't resolved and disposed of by the  
8 settlement.

9 MR. LADD: I will withdraw the question.

10 Q. Do you understand that the power of the state  
11 Attorneys General, under their kind of continuing enforcement  
12 mechanism, extends to enforcing the advertising code  
13 provisions?

14 MR. BARRON: Of the MSA.

15 MR. LADD: No, the 1964 era advertising code.

16 THE WITNESS: I don't know that that's  
17 specifically in the MSA. But they certainly can enforce the  
18 MSA, which is a reflection of all of the restrictions that  
19 would be on the company, and how we are expected to conduct  
20 business.

21 BY MR. LADD: Q. To the extent that similar  
22 provisions are found in both the advertising code and the  
23 MSA, the Attorneys General can enforce them under the MSA?

24 A. And go beyond the advertising code.

25 Q. Do you, yourself, have an opinion as to whether  
00505

1 those changes would have been made absent the state lawsuits?

2 MR. BARRON: Wait a minute. First of all, I'm not  
3 sure what you mean by "those changes." Until you get more  
4 specific, it's ambiguous and calls for speculation.  
5 Individually it may call for speculation.

6 BY MR. LADD: Q. Philip Morris was continuing to  
7 use billboards right up until the time it entered into the  
8 MSA, and there was sufficient numbers of states that signed  
9 on; is that true?

10 A. I believe so.

11 Q. Just to --

12 A. If I'm hearing the question.

13 Q. Just to make sure you and I are talking about the  
14 same thing, do you understand it to have been the case that  
15 the MSA became binding on the parties only when a certain  
16 number of states signed on to the agreement?

17 A. Yes.

18 Q. And there was some specific day out there, and I  
19 don't remember what it was, when the necessary number of  
20 states had signed on and the agreement became binding;  
21 correct?

22 A. Yes.

23 Q. And as far as you recall, did Philip Morris  
24 continue to use billboards up until that point?

25 A. We did.

00506

1 Q. And was there some period of time that you were  
2 given under the MSA to take down the billboards, after it  
3 became effective?

4 A. We were.

5 Q. And do you recall approximately how long that  
6 was?

7 A. It was several months.

8 Q. In your opinion, was that kind of the minimum  
9 amount of time that was necessary in order to accomplish what  
10 needed to be done?

11 A. Well, in fact, we accomplished it sooner than the  
12 time frame.

13 Q. Do you have an opinion as to whether or not Philip  
14 Morris would have kind of unilaterally discontinued the use  
15 of billboards if it had not been for the MSA?

16 MR. BARRON: I'm going to object to the question  
17 because I think, in order for a person to answer that, you're  
18 going to have to give more information, in this kind of  
19 hypothetical, it seems to me, because the answer obviously

20 could depend on all sorts of factors.

21 MR. LADD: Let me try it -- let me withdraw it  
22 temporarily. I may ask it again.

23 Q. Is it your view that Philip Morris discontinued  
24 billboards because of the MSA?

25 A. I think a result of the MSA was Philip Morris  
00507

1 eliminating billboards.

2 Q. Is it fair to say that the MSA was just as binding  
3 upon Philip Morris' major competitors as it was binding upon  
4 Philip Morris?

5 A. Yes.

6 Q. When the MSA came into effect, and you were taking  
7 down your billboards, you knew that Reynolds was taking down  
8 its billboards, too.

9 A. That's correct.

10 Q. Is it fair to say that made it easier for you to  
11 discontinue a more possible -- strike that.

12 Is it true that that made it more commercially  
13 feasible for you to discontinue billboards knowing that your  
14 competitors were going to have to do the same thing at the  
15 same time?

16 A. I think that's fair.

17 Q. Do you have any reason to think that Philip Morris  
18 would have discontinued billboards, as of today, if it had  
19 not been for the MSA?

20 A. We very well may have.

21 Q. Why do you think that?

22 A. Because, in fact, we were advocating, as part of  
23 the June 20th agreement, and even before June 20th, in a  
24 recommended blueprint for federal legislation, that  
25 billboards be one of the mediums that the companies be

00508

1 prevented from using in the future.

2 Q. So is it fair to say that Philip Morris was  
3 looking for a proposal where billboards would be discontinued  
4 as a matter of law rather than Philip Morris unilaterally  
5 stopping billboards?

6 A. Yes, I think that's fair.

7 Q. Is it fair to say that Philip Morris would have  
8 been concerned about losing market share had it stopped  
9 advertising on billboards and its competitors had been able  
10 to continue to do so?

11 A. I believe that was a concern, yes.

12 Q. And that strikes you as commercially a fair  
13 concern.

14 A. Well, as a publicly owned company that has  
15 shareholders to whom we are obligated, yes, I believe that is  
16 a prudent position.

17 Q. Do you have an opinion as to whether or not Philip  
18 Morris discontinued, say, the Virginia Slims seniors tennis  
19 tour because of the MSA?

20 A. It was also a result of the MSA, yes.

21 Q. Were there any proposals, other than the MSA  
22 itself, that Philip Morris had made to support legislation  
23 which would have prohibited Philip Morris and its competitors  
24 from sponsoring events like that?

25 A. Yes.

00509

1 Q. And is that the June 20th agreement again, or is  
2 that in some other --

3 A. I believe that was the June 20th.

4 Q. Eventually the June 20th agreement, Philip Morris

5 withdrew its support for that agreement.

6 A. Yes, we did.

7 Q. As --

8 A. Well, not the June 20th agreement as it was put  
9 forward. What finally happened, when it became a politicized  
10 issue in Washington, yes, we withdrew --

11 Q. Is it fair to say Philip Morris thought that the  
12 kind of -- the price that was being asked to be paid for that  
13 settlement agreement had been escalated in the Congress?

14 MR. BARRON: I'm going to object to the phrase  
15 "price." If you mean the total extractions that were being  
16 requested of certain congressional people rather than accept  
17 the June 20th proposal, or some other reasonable modification  
18 of it, then I think the question is a fair one.

19 MR. LADD: I think probably "extraction" may be  
20 almost as argumentative as price, if not more so. Let me try  
21 to find a neutral term.

22 Q. Is it fair to say that, in the course of the  
23 June 20th agreement proceeding through Congress, that  
24 amendments were added that, in Philip Morris' view, were  
25 undesirable?

00510

1 A. Yes, I think that's fair.

2 Q. And it was as a result of a series of amendments  
3 that Philip Morris withdrew its support.

4 A. Correct.

5 MR. LADD: Why don't we take a five-minute break.

6 MR. BARRON: Sure.

7 (There was a brief recess.)

8 BY MR. LADD: Q. Do you understand that if you  
9 appear in front of the Whiteley jury, that they will have  
10 already decided that Philip Morris has done something that  
11 justifies a punitive damage award against Philip Morris?

12 MR. BARRON: That is actually argumentative as  
13 phrased. I'm not quite sure that that's what the decision  
14 means.

15 MR. LADD: Let me ask.

16 Q. Do you understand that they will already have made  
17 a finding, under California law relative to punitive damage,  
18 before they even hear you?

19 A. That's my understanding.

20 Q. And that the -- either the entire issue or a major  
21 issue will be how much?

22 MR. BARRON: That's compound as phrased.

23 BY MR. LADD: Q. Do you understand that given  
24 what the jury will have decided before you even start to  
25 testify, that they have made some determination that's gone

00511

1 at least somewhat down the road towards giving a punitive  
2 damage award?

3 MR. BARRON: That's argumentative as phrased,  
4 too.

5 I assume you don't mean to trick her. You know or  
6 you should know that the determination is, if there is to be  
7 a phase two, that there has been sufficient evidence of  
8 fraud, oppression or malice. Phase two has, in essence, two  
9 questions. One, whether punitive damages should be  
10 assessed. Trust me on this. Call Madelyn if you aren't  
11 sure. And the second question is, if their answer is that  
12 they believe punitive damages should be assessed, then the  
13 amount.

14 MR. LADD: Let's go off the record for a minute.  
15 (Discussion off the record.)

16 BY MR. LADD: Q. Do you understand, Ms. Merlo, if  
17 you testify to the jury, they will have already decided that  
18 there has been clear and convincing evidence presented to  
19 them that Philip Morris has been guilty of oppression, fraud  
20 or malice on one or more causes of action?

21 A. That's my understanding.

22 Q. Do you see yourself testifying in the way of an  
23 apology to the jury for what Philip Morris has done in the  
24 past?

25 MR. BARRON: Object to the form of the question as  
00512

1 vague and ambiguous.

2 THE WITNESS: No.

3 BY MR. LADD: Q. Do you see it as being in the  
4 nature of explanation to the jury of why Philip Morris isn't  
5 so bad as to justify an order of punitive damages?

6 MR. BARRON: I'm going to object to the form of  
7 the question. It lacks foundation that she has any  
8 understanding as to what is any intended impact.

9 Second of all, it is, I think, ambiguous as  
10 phrased. You and she haven't reached a common understanding  
11 of what you mean by the phraseology.

12 BY MR. LADD: Q. Do you have an answer for me?

13 A. I would testify as to what I believe the jurors  
14 should know about Philip Morris.

15 Q. Do you think, at least in some instances, that  
16 that testimony essentially explains things to the jury that  
17 the jury might otherwise, absent such an explanation, think  
18 bad things?

19 A. It might.

20 Q. Do you see your testimony as presenting  
21 information to the jury that suggests that Philip Morris has  
22 already been punished enough for whatever bad things the jury  
23 thinks it may have done?

24 MR. BARRON: May I have that question read?

25 (The reporter read the pending  
00513

1 question.)

2 MR. BARRON: I think that's, again, very ambiguous  
3 and lacks foundation. I wish you would find a way to make it  
4 more specific.

5 MR. LADD: I will stick with that.

6 MR. BARRON: I will instruct her not to answer  
7 because I don't think that it's clear there can be a common  
8 understanding between the two of you of what you are asking.

9 BY MR. LADD: Q. In terms of kind of a personal  
10 opinion, and then I guess I will ask you whether that  
11 personal opinion conforms to the position of Philip Morris as  
12 a company.

13 In terms of a personal opinion, do you think  
14 Philip Morris has in some sense been punished as a result of  
15 litigation against the company over the past five years?

16 A. I certainly think it's had a negative effect on  
17 Philip Morris.

18 Yes, I guess you could say perhaps you could use  
19 the word "punish."

20 Q. Do you think that that negative effect, to use  
21 your words, has already been disproportionate to any of  
22 Philip Morris' conduct that might be the subject of  
23 criticism?

24 A. In my opinion?

25 Q. Yes, in your opinion.

00514

1 A. Yes.

2 Q. Do you think that that's also Philip Morris'  
3 position as an entity, as a corporation?

4 A. It's hard to speak on behalf of a corporation  
5 because a corporation is made up of people, and I'm sure  
6 there are people who believe that. I can't speak for an  
7 entity.

8 Q. You and I have talked before about the process by  
9 which a company formulates a position.

10 A. And is it fair to say Philip Morris hasn't  
11 articulated a position on the question?

12 A. I don't think there is a position to question.

13 Q. There are opinions of individual employees.

14 A. I believe that would be correct, yes.

15 Q. Do you know whether Philip Morris has formed a  
16 position as to whether or not there are any incidents in its  
17 history for which it should appropriately apologize?

18 A. A position? Again, I would need some  
19 clarification as to what you specifically are asking me. I  
20 don't know how to answer that.

21 Q. You have read the news accounts of, for instance,  
22 Geoffrey Bible's testimony in Minnesota; have you not?

23 A. I have read some of them.

24 Q. Have you read the transcript itself?

25 A. I have not.

00515

1 Q. In your opinion, would it be fair to characterize  
2 some of what Mr. Bible expressed to the jury in Minnesota as  
3 an apology for what he characterized as isolated unfortunate  
4 incidents?

5 MR. BARRON: I'm going to object to the question  
6 as vague and ambiguous in respects to, No. 1, you haven't  
7 indicated in the question whether you're asking her to try to  
8 answer the question based on some information outside of the  
9 transcripts, which she has already talked about she hasn't  
10 read completely.

11 No. 2 --

12 MR. LADD: I will rephrase the question.

13 Q. Do you think that from what you know about  
14 Mr. Bible's testimony, parts of it could fairly be  
15 characterized as an apology by the company?

16 MR. BARRON: By the company?

17 MR. LADD: By the company.

18 THE WITNESS: It would be hard for me to draw a  
19 conclusion because, as I say, I have not discussed it with  
20 Mr. Bible. I have not read his transcripts. So I don't know  
21 how to answer that question.

22 BY MR. LADD: Q. To your knowledge, has the  
23 company formed a company position on any issue that it feels  
24 it appropriate to apologize to the American people or to its  
25 customers about any incident in its past?

00516

1 A. I am not aware of any position of apology.

2 MR. LADD: I think I have no more questions.

3 Thank you very much.

4 MR. BARRON: Thank you. I have no more questions  
5 at this time.

6 (Discussion off the record.)

7 MR. BARRON: We have had a discussion off the  
8 record concerning the areas that I instructed  
9 Ms. Merlo not to answer specifically relating to her  
10 compensation in various forms, such as the amount of  
11 bonuses.

12           We have agreed that Mr. Ladd will speak with other  
13 plaintiffs' counsel, like Madelyn and Bob, and notify me if  
14 there is any desire on plaintiffs' part to pursue those areas  
15 of inquiry further than they were allowed to pursue them by  
16 me. And if they wish to try to pursue them further, we are  
17 going to agree to get the judge, as early as we can, meaning  
18 Judge Munter, and present the issue to him, and let him  
19 resolve it so there would be a possibility, if he resolved it  
20 unfavorably to me, that we could still allow Ms. Merlo to  
21 resume her deposition. If he resolves it favorably, we have  
22 no further need to depose her.

23 MR. LADD: My expectation, based upon my past  
24 conversations with Madelyn, is that she probably does want to  
25 make that request. I can't commit her to be ready to make it

00517  
1 tomorrow, but I will tell her that there are some good  
2 reasons you have expressed why it would be a good idea to do  
3 that tomorrow, if she can.

4                   MR. BARRON: I guess I wasn't clear. If there  
5 isn't a commitment not to pursue it, I am going to present it  
6 up with the judge.

7 MR. LADD: I see.  
8 MR. BARRON: Because I hope and believe that he  
9 will see that issue my way and Ms. Merlo's way. But if not,

10 I want to try to take the opportunity to have her presented  
11 for further deposition on those imminent issues.  
12 MR. LADD: My expectation is that they probably

12 MR. LADD: My expectation is that they probably  
13 will not concede that point. In case they -- A, I will give  
14 them notice that's what you're planning to do, and B, and in  
15 case they might concede that point, I will try to get in  
16 touch with them tonight.

17 Do you want them to try to call you this evening?

18 MR. BARRON: I would like to know.

19 MR. LADD: Do they have your home phone number?

20 MR. BARRON: I will give you all those numbers  
21 right now. I will go off the record for that. Thank you

22 (The deposition concluded at 5:37 p.m.)  
23

23 -----  
24 -----  
25 -----

SIGNATURE OF WITNESS

25  
2017-01-01

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CERTIFICATE OF DEPOSITION OFFICER

3 I, JO ANN BRUSCELLA, C.S.R. No. 4295, duly authorized  
4 to administer oaths pursuant to Section 2093(b) of the Code  
5 of Civil Procedure, hereby certify that the witness in the  
6 foregoing deposition was by me duly sworn to testify the  
7 truth, the whole truth and nothing but the truth in the  
8 within-entitled cause; that said deposition was taken at the  
9 time and place therein stated; that the testimony of the said  
10 witness was reported by me and thereafter transcribed by me  
11 or under my direction into typewriting; that the foregoing is  
12 a full, complete and true record of said testimony; and that  
13 the witness was given an opportunity to read and correct said  
14 deposition and to subscribe the same.

15 I FURTHER CERTIFY that I am not of counsel nor attorney  
16 for either or any of the parties in the foregoing deposition  
17 and caption named, or in any way interested in the outcome of  
18 the cause named in said caption.

19

23

24

25